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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1933

Nos.

NATIONAL PAPER PRODUCTS COMPANY
(a Corporation),

Petitioner,

vs.

GUY T. HELVERING, as Commissioner of Internal Revenue,

Respondent.

ZELLERBACH PAPER COMPANY
(a Corporation),

Petitioner,

vs.

GUY T. HELVERING, as Commissioner of Internal Revenue,

Respondent.

PETITION FOR WRITS OF CERTIORARI,
to the United States Circuit Court of Appeals
for the Ninth Circuit.

To the Honorable Charles Evans Hughes, Chief Justice of the United States, and to the Associate Justices of the Supreme Court of the United States:

The Petition of National Paper Products Company, a Corporation, and Zellerbach Paper Company, a Corporation, for Writs of Certiorari, directed to the Circuit Court of Appeals for the Ninth Circuit, respectfully shows:

A.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

The controversy herein arises out of additional income taxes claimed by the Commissioner of Internal Revenue from National Paper Products Company and Zellerbach Paper Company for the fiscal year ended April 30, 1925.

The two cases, hereinabove noted, were jointly tried before the United States Board of Tax Appeals, and a joint decision against the taxpayers was rendered therein (R. 87).*

Petitions to review the two orders of the Board of Tax Appeals were filed with the Circuit Court of Appeals for the Ninth Circuit. Here also, the two cases were jointly briefed and argued; a joint opinion was rendered (R. 94), but a separate judgment was rendered in each case, affirming the Orders of the Board of Tax Appeals.

On July 15, 1925, Zellerbach Paper Company, one of the Petitioners herein, filed a Consolidated Income

*This is a joint Petition by the two Petitioners hereinabove named. All references are to the record in National Paper Products Company v. Commissioner of Internal Revenue, C. C. A. No. 7140, unless otherwise noted.

Tax Return for the fiscal year ended April 30, 1925, with the Collector of Internal Revenue, San Francisco, California, on behalf of itself and its wholly owned subsidiaries, National Paper Products Company (one of the Petitioners herein) and Sanitary Products Corporation, the latter corporation having been operated at a loss.

At the time of the filing of the consolidated return referred to, to-wit, July 15, 1925, the Revenue Act of 1924, c. 234, 43 Stat. 253, was in force. Under the provisions of this Act (Section 277 (a) (1) thereof) the time within which the Commissioner could assess additional taxes for the fiscal year in question, in the absence of fraud (Section 278 (a)), was four years after the return was filed. The Commissioner conceded there was no fraud (R. 19).

In the event of the mailing by the Commissioner of a so-called sixty-day letter under Section 274 (a), the time to make an assessment was extended (Section 277 (b)).

The tax reported in the consolidated income tax return hereinabove referred to, in the sum of $158,374.05 was thereafter paid (R. 22, 94). The return was used by the Commissioner as a basis for an audit of the taxpayers' affairs.

Thereafter, to-wit, on February 26, 1926, the Revenue Act of 1926, c. 27, 44 Stat. 9, was adopted.

Thereafter, on February 28, 1926, the Commissioner of Internal Revenue issued Treasury Decision 3843, reading as follows (see Cumulative Bulletin V-1, Jan.-June, 1926, p. 99):

> "Any corporation which has filed a return for a fiscal year ending in 1925 and paid or become liable for a tax computed under the Revenue Act of 1924, and is subject to additional tax for the same period under the Revenue Act of 1926, must file a new return covering such additional tax on or before May 15th, 1926. Payment of the additional tax may be made at the time the return is filed or, if installment payments are desired, such installments must be paid at the time they would be due if based upon a return for the fiscal year ended February 28th, 1926."

A copy of the above decision was mailed to the Zellerbach Paper Company by the Collector of Internal Revenue at San Francisco, California (R. 23).

The 1924 Revenue Act, c. 234, 43 Stat. 253 (Section 230 thereof), in effect at the time of the filing of the original consolidated return, i. e., July 15, 1925, provided for a tax of 12½% upon the net income of a corporate taxpayer.

The Revenue Act of 1926, c. 27, 44 Stat. 9, Section 230 (a) (1) thereof, increased the rate of tax applicable to corporations from 12½% to 13%. This provision was retroactive to January 1, 1925 (Section 1200 (a)).

This change in the rate of tax affected Zellerbach Paper Company and its subsidiaries for the last third of its fiscal year, i. e., from January 1, 1925 to April 30, 1925. By reason of the change in the rate of tax, two-thirds of the net income of Zellerbach Paper Company and its subsidiaries was subject to the 12½%

rate, and one-third of such net income was subject to the 13% rate.

In accordance with the requirements of Treasury Decision 3843, hereinabove quoted, Zellerbach Paper Company filed an Amended Return on behalf of itself and its subsidiaries on May 14, 1926. This Amended Return was filed on Form 1120-A (prepared and furnished by the Treasury Department).

No schedules were attached to this Amended Return and no data were set forth therein except that in line 25, net income of $1,266,992.39 was set forth. This was the same amount of net income shown on the original return filed July 15, 1925 (R. 23).

The sole purpose in filing the Amended Return on May 14, 1926, was to make the necessary computations showing the additional amount of tax due on account of the increase in the rate as hereinabove set forth. These computations showed an additional tax due in the sum of $2111.65, which amount was paid at the time of filing the Amended Return (R. 96, 97).

The 1926 Revenue Act not only changed the rate of tax applicable to corporate taxpayers, but also reduced the period within which an assessment might be made by the Commissioner, from four years to three years after the return was filed (c. 27, 44 Stat. 9, Section 277 (a) (1)). In the event of the issuance of the so-called sixty-day letter under Section 274 of the 1926 Act, the time was extended (Section 277 (b)).

This part of the 1926 Act was also retroactive to January 1, 1925 (Section 1200 (a)).

The United States Board of Tax Appeals in its opinion rendered herein (R. 21, 24) and the Circuit Court of Appeals for the Ninth Circuit, in its opinion (R. 94, 105) held the three year statute applies to the instant cases, which we understand the Government agrees to.

Deficiency notices under Section 274 of the 1926 Act were mailed to the taxpayers on October 10, 1928 (R. 10; R.—C. C. A. No. 7141, p. 36).

For convenience, we repeat the important dates:

July 15, 1925: Consolidated Income Tax Return filed by Zellerbach Paper Company and its subsidiaries, for the fiscal year ended April 30, 1925;

February 26, 1926: Revenue Act of 1926 adopted, increasing the rate of tax applicable to corporations, from 12½% to 13%, and reducing the statutory period within which the Commissioner might make an assessment from four years to three years, both changes being retroactive to January 1, 1925;

May 14, 1926: Amended Income Tax Return filed by Zellerbach Paper Company and its subsidiaries;

October 10, 1928: Date of mailing deficiency notices by the Commissioner under Section 274 of the Revenue Act of 1926.

It is obvious from the above that on the date of the mailing of the deficiency notices on October 10, 1928, under Section 274 of the 1926 Act, (a) less than four years (the period provided in the 1924 Act) from the date of the filing of the original return on July 16, 1925, had elapsed; (b) more than three years (the

period provided in the 1926 Act) from the date of the filing of the original return on July 16, 1925, had elapsed; and (c) less than three years had elapsed from the date of the filing of the Amended Return on May 14, 1926.

It is the contention of the Petitioners herein that the three year period as provided in the 1926 Revenue Act applies (this we understand is agreed to by the Government); also that the filing of the original return on July 15, 1925, started the three year statutory period in motion by reason of the provisions of the 1926 Act (Section 1200 (a)) making the pertinent portions thereof retroactive to January 1, 1925.

It was admitted that the amounts claimed are due unless barred by the Statute of Limitations (R. 97). It was also stipulated that the sole question is as to whether or not the Commissioner is barred from assessing and collecting additional taxes by reason of the Statute of Limitations (R. 88, 94).

B.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRITS.

(1) The Circuit Court of Appeals for the Ninth Circuit has held in the instant cases that a consolidated Income Tax Return filed on July 15, 1925, and in strict conformity with the Revenue Act of 1924 in force at that time, did not become a return under the Revenue Act of 1926 adopted on February 26, 1926, despite the fact the pertinent portions of the 1926

Revenue Act were made retroactive to January 1, 1925 (R. 94).

The Court also held the filing of this return did not set in motion the statutory period of three years provided by the Revenue Act of 1926 (Section 277 (a) (1)).

As a necessary result of the above, the court held the filing of an Amended Return on May 14, 1926, had the effect of extending the statutory period which would ordinarily have expired on July 15, 1928. This resulted in the further holding that the Commissioner's deficiency letters were timely although not issued until October 10, 1928, more than three years after the filing of the original return on July 15, 1925, despite the provisions of Section 277 (a) (1) of the 1926 Act, supra.

The decision of the Circuit Court of Appeals for the Ninth Circuit on the above questions is in direct conflict with decisions on the same questions (except for the years and the Revenue Acts involved), by the Circuit Court of Appeals for the Fifth Circuit in *Myles Salt Company v. Commissioner* (1931), 49 Fed. (2d) 232, and by the Circuit Court of Appeals for the Eighth Circuit in *Valentine-Clark Company v. Commissioner* (1931), 52 Fed. (2d) 346, and by the Court of Appeals of the District of Columbia in *Isaac Goldmann Company v. Burnet* (1931), 51 Fed. (2d) 427.

The prevailing opinion of the United States Board of Tax Appeals in the instant cases recognized the applicability of the three cases hereinabove referred to but refused to follow them (R. 24).

The dissenting opinion of the Board of Tax Appeals also recognized the applicability of these cases, and stated they should be followed (R. 28).

The Circuit Court of Appeals for the Ninth Circuit in its opinion filed in the instant cases, also recognized the questions involved in the three cases hereinabove referred to were the same as here (R. 94 at 110). The Court states in connection therewith:

> "In the companion case (No. 7209) we have held that a return filed under the Revenue Act of 1918 could not be considered a return under the Revenue Act of 1921, if it did not show the deductions as authorized by the Act of 1921, although in the particular case involved the statutory deduction of $2000 was the only change made in the return of the particular taxpayer. We have declined with all due respect to follow decisions to the contrary by coordinate courts. These decisions are pressed upon us here as a ground for reversing the action of the Board of Tax Appeals. It is not disputed by the Commissioner that the principle of those decisions is applicable to the case in hand. If by reason of the fact that the Commissioner by a mere computation applied to the return filed under the Revenue Act of 1918 can determine the proper tax levied by the Act of 1921 on petitioner's income, a new return is unnecessary, then a new return is unnecessary in the case at bar. Indeed, the decisions above referred to apply with more force to the case at bar where the only question involved is a matter of computation of a tax at a new rate than to a case where the question under consideration is a deduction which a statute expressly requires be shown by the taxpayer in his return as fixed by the law

applicable to the taxation of the income shown in the return."

(2) An additional reason why the Writs of Certiorari should be granted is that an important question of Federal law has been decided by three Circuit Courts of Appeals and by the Court of Appeals of the District of Columbia, and has not been, but should be, settled by this Court.

The questions decided, and the Courts deciding them, are set forth in subdivision (1) of the heading "Reasons Relied on for the Allowance of the Writs".

(3) A third reason why the Writs of Certiorari should be granted is that the Circuit Court of Appeals for the Ninth Circuit, has decided a Federal question in a way probably in conflict with applicable decisions of this Honorable Court.

The effect of the decision of the Circuit Court of Appeals for the Ninth Circuit in the instant cases is that the filing of an Amended Income Tax Return on May 14, 1926 extended the statutory period within which an assessment might be made by the Commissioner. The original Income Tax Return was filed July 15, 1925; the period of limitations applicable thereto was three years (Revenue Act of 1926, Section 277 (a) (1) thereof); the three year period expired July 15, 1928; the Court held, however, that the three year period would not expire until May 14, 1929, three years after the filing of the Amended Return (see opinion, R. 94 at 105).

This holding is contra to the decision of this Honorable Court in *Florsheim Bros. v. U. S.* (1930), 280 U. S. 453, 462; 50 Sup. Ct. Rep. 215, 218; 74 L. Ed. 542, 548.

Wherefore, your Petitioners respectfully pray that Writs of Certiorari be issued out of and under the seal of this Honorable Court directed to the Circuit Court of Appeals for the Ninth Circuit commanding that Court to certify and send to this Court for its review and determination, on a day certain to be therein named, full and complete transcripts of the records and proceedings in the cases numbered and entitled on its docket No. 7140, National Paper Products Company, a Corporation, Petitioner, v. Guy T. Helvering, as Commissioner of Internal Revenue, Respondent; No. 7141, Zellerbach Paper Company, a Corporation, Petitioner, v. Guy T. Helvering, as Commissioner of Internal Revenue, Respondent, and that the said judgments and each of them of the said Circuit Court of Appeals for the Ninth Circuit may be reversed by this Honorable Court, and that your Petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your Petitioners will ever pray.

Dated, San Francisco, California,
May 4, 1934.

NATIONAL PAPER PRODUCTS COMPANY,
ZELLERBACH PAPER COMPANY,
By JOHN FRANCIS NEYLAN,
J. PAUL MILLER,
Attorneys for Petitioners.

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1933

NOS.

NATIONAL PAPER PRODUCTS COMPANY
(a Corporation),
Petitioner,

vs.

GUY T. HELVERING, as Commissioner of Internal Revenue,
Respondent.

ZELLERBACH PAPER COMPANY
(a Corporation),
Petitioner,

vs.

GUY T. HELVERING, as Commissioner of Internal Revenue,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRITS OF CERTIORARI.

I.

OPINION OF THE COURT BELOW.

As heretofore pointed out, the Circuit Court of Appeals for the Ninth Circuit rendered a joint opinion in the two cases herein on February 28, 1934. This opinion has not been reported. It is printed in the Record, beginning at page 94.

A joint opinion (and a joint dissenting opinion) were also rendered by the United States Board of Tax Appeals, and reported in 26 B. T. A. 92.

II.

JURISDICTION.

1. The jurisdiction of this Court is invoked under subdivisions (a) and (c) of Section 240, amended, of the Judicial Code (U. S. C. A. title 28, sec. 347; Mar. 3, 1891, c. 517, sec. 6, 26 Stat. 828; Mar. 3, 1911, c. 231, sec. 240, 36 Stat. 1157; Feb. 13, 1925, c. 229, sec. 1, 43 Stat. 938).

2. Although a joint opinion was rendered, separate judgments were filed in the two cases. See National Paper Products Company v. Helvering, C. C. A. No. 7140 at page 112; Zellerbach Paper Company v. Helvering, C. C. A. No. 7141, at page 89.

3. As heretofore pointed out in our Petition for Writs of Certiorari and under the heading, Reasons Relied on for the Allowance of the Writs (see page 7 supra), there is a clear conflict between the decisions of the Circuit Court of Appeals for the Ninth Circuit

in the instant cases and other courts of coordinate jurisdiction. Supreme Court Rule 38, subdivision 5 (b) provides for the granting of a Petition for Certiorari within the discretion of this Court, where such conflict exists.

4. In the following cases Petitions for Writs of Certiorari were granted where a conflict between different Circuit Courts of Appeals existed:

Magnum Import Co. v. Coty (1923), 262 U. S. 159, 163; 43 Sup. Ct. Rep. 531, 532; 67 L. Ed. 922, 924;

Sanitary Refrigerator Co. v. Winters (1928), 278 U. S. 587; 49 Sup. Ct. Rep. 17; 73 L. Ed. 521; and see

Sanitary Refrigerator Co. v. Winters (1929), 280 U. S. 30, 34; 50 Sup. Ct. Rep. 9, 10; 74 L. Ed. 147, 152;

Hamilton-Brown Shoe Company v. Wolf Brothers & Company (1916), 240 U. S. 251, 257; 36 Sup. Ct. Rep. 269; 60 L. Ed. 629, 633 and cases cited.

III.

STATEMENT OF THE CASE.

A full statement of the case has been given under the heading "A" in the Petition (pages 2 to 7 inclusive), and in the interest of brevity, the statement is not repeated at this point.

IV.

SPECIFICATION OF ERRORS.

(a) The Court erred in finding and holding that the collection of the deficiencies in question was not barred by the Statute of Limitations, Revenue Act of 1926, c. 27, 44 Stat. 9, Section 277 (a) (1) thereof.

(b) The Court erred in finding and holding that the three year period of limitations began to run only with the filing of the Amended Return on May 14, 1926.

(c) The Court erred in failing to find and hold that the three year period of limitations commenced to run with the filing of the original return, on July 15, 1925.

(d) The Court erred in failing to hold that the return filed May 14, 1926, was merely an amended return and did not toll the statutory period.

(e) The Court erred in failing to find and hold that the three year period of limitations began to run with the filing of the original return, even though an amended return was filed on May 14, 1926.

(f) The Court erred in failing to find and hold that the return filed July 15, 1925, did not become the return required under the Revenue Act of 1926 upon its adoption February 26, 1926.

(g) The Court erred in finding and holding that the Revenue Act of 1926 required the filing of a new return, where a return had already been filed under the Revenue Act of 1924, where the only requirement

was the making of a new computation by reason of the increase in the tax rate by the 1926 Act.

(h) The Court erred in affirming the Order of the United States Board of Tax Appeals in National Paper Products Company, a Corporation, Petitioner, v. Guy T. Helvering, as Commissioner of Internal Revenue, Respondent, C. C. A. No. 7140, which Order found that a deficiency was due from the said National Paper Products Company in the sum of $20,657.40 (R. 29).

(i) The Court erred in affirming the Order of the United States Board of Tax Appeals in Zellerbach Paper Company, a Corporation, Petitioner, v. Guy T. Helvering, as Commissioner of Internal Revenue, Respondent, C. C. A. No. 7141, which Order found that a deficiency was due from the said Zellerbach Paper Company in the sum of $7601.55 (R.—C. C. A. No. 7141, P. 26).

V.

ARGUMENT.

POINT A. THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT HAS RENDERED A DECISION CLEARLY IN CONFLICT WITH DECISIONS BY COURTS OF COORDINATE JURISDICTION.

We respectfully refer the Court to our Petition for Writs of Certiorari, heading "B", Reasons Relied on for the Allowance of the Writs (pages 7 to 10). Here we have set forth the questions decided by the Circuit Court of Appeals for the Ninth Circuit, in the instant cases, and have shown the identical questions have been passed upon by the Circuit Courts of Appeals for

the Fifth and the Eighth Circuits, and by the Court of Appeals of the District of Columbia, and that a clear conflict exists between the Circuit Court of Appeals for the Ninth Circuit on the one hand, and the Circuit Court of Appeals for the Fifth and Eighth Circuits, and the Court of Appeals of the District of Columbia, on the other hand. The cases decided contra to the decision in the instant cases are *Myles Salt Company v. Commissioner* (1931), 49 Fed. (2d) 232; *Valentine-Clark Company v. Commissioner* (1931), 52 Fed. (2d) 346; and *Isaac Goldmann Company v. Burnet* (1931), 51 Fed. (2d) 427.

The fact that a clear conflict exists is recognized by the United States Board of Tax Appeals in the prevailing opinion (R. 24) and in the dissenting opinion (R. 28) and by the Circuit Court of Appeals for the Ninth Circuit in its own opinion herein (R. 94, 110).

We rely upon Supreme Court Rule 38, subdivision 5(b) and on the following cases:

Magnum Import Co. v. Coty (1923), 262 U. S. 159, 163; 43 Sup. Ct. Rep. 531, 532; 67 L. ed. 922, 924;

Sanitary Refrigerator Co. v. Winters (1928), 278 U. S. 587; 49 Sup. Ct. Rep. 17; 73 L. ed. 521;

Sanitary Refrigerator Co. v. Winters (1929), 280 U. S. 30, 34; 50 Sup. Ct. Rep. 9, 10; 74 L. ed. 147, 152;

Hamilton-Brown Shoe Company v. Wolf Brothers & Company (1916), 240 U. S. 251, 257; 36 Sup. Ct. Rep. 269; 60 L. ed. 629, 633.

POINT B. AN IMPORTANT QUESTION OF FEDERAL LAW HAS BEEN DECIDED BY THREE CIRCUIT COURTS OF APPEALS, AND BY THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA, AND HAS NOT BEEN, BUT SHOULD BE, DECIDED BY THIS COURT.

The general question as to whether or not an Income Tax Return filed in strict conformity to a Revenue Act in force at the time, starts the period of limitation provided in a later Revenue Act, if additional taxes are due under the new Revenue Act for the period covered by the return, has been passed upon by the Circuit Court of Appeals for the Fifth, Eighth and Ninth Circuits, and by the Court of Appeals of the District of Columbia.

The Circuit Court of Appeals for the Fifth Circuit has passed on the question in *Myles Salt Company v. Commissioner* (1931), 49 Fed. (2d) 232; the Circuit Court of Appeals for the Eighth Circuit has passed upon the question in *Valentine-Clark Company v. Commissioner* (1931), 52 Fed. (2d) 346, and the Circuit Court of Appeals for the Ninth Circuit has passed on the question in the instant cases, and in three companion cases in which a Petition for Writs of Certiorari is being filed concurrently herewith.* The question has also been passed upon by the Court of Appeals of the District of Columbia in *Isaac Goldmann Company v. Burnet* (1931), 51 Fed. (2d) 427.

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*The three companion cases are Zellerbach Paper Company v. Commissioner of Internal Revenue, C. C. A. 9, No. 7209; Zellerbach Paper Company, as Transferee of A. S. Hopkins Company v. Commissioner of Internal Revenue, C. C. A. 9, No. 7210; and National Paper Products Company v. Commissioner of Internal Revenue, C. C. A. 9, No. 7211.

In the above cases (other than the instant cases) the Courts were considering the Revenue Act of 1918, c. 18, 40 Stat. 1057, and the Revenue Act of 1921, c. 126, 42 Stat. 227. The 1921 Act eliminated the corporate exemption allowed by the 1918 Act where the income for the taxable year in question exceeded $25,000. This resulted in an increase in the tax (see 1918 Act, section 236(c); see 1921 Act, section 236(b)).

In the instant cases, the Revenue Act of 1924, c. 234, 43 Stat. 253, and the Revenue Act of 1926, c. 27, 44 Stat. 9, are involved, and the increase in the tax is caused by an increase in the rate of tax applicable to these taxpayers in the 1926 Act. The same principle is involved, however, and this is recognized by the United States Board of Tax Appeals in its prevailing opinion (R. 24), and in the dissenting opinion (R. 28), and by the Circuit Court of Appeals for the Ninth Circuit in its opinion (R. 94, 110). We respectfully submit that the questions involved should be passed upon by this Honorable Court.

POINT C. A THIRD REASON WHY THE WRITS OF CERTIORARI SHOULD BE GRANTED IS THAT THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT HAS DECIDED A FEDERAL QUESTION IN A WAY PROBABLY IN CONFLICT WITH APPLICABLE DECISIONS OF THIS HONORABLE COURT.

The effect of the decision of the Circuit Court of Appeals for the Ninth Circuit in the instant cases is that the filing of an Amended Income Tax Return tolls the running of the Statute of Limitations.

The original return was filed herein on July 15, 1925. The statutory period within which an assessment could be made by the Commissioner was four years at the time of the filing of this return. Revenue Act of 1924, c. 234, 43 Stat. 253, Section 277(a) (1). This period was reduced to three years by Section 277(a) (1) of the 1926 Revenue Act, c. 27, 44 Stat. 9.

After the adoption of this latter Act, and in compliance with the requirements of Treasury Decision 3843, to-wit, on May 14, 1926, the taxpayers herein filed an Amended Income Tax Return.

The Circuit Court of Appeals for the Ninth Circuit has held in the instant cases the original return did not start the running of the statutory period but that such period was set in motion only by the filing of the Amended Return.

This is in conflict with the holding of this Honorable Court in *Florsheim Bros. v. U. S.* (1930), 280 U. S. 453, 462; 50 Sup. Ct. Rep. 215, 218; 74 L. ed. 542, 548.

VI.

CONCLUSION.

It is, therefore, respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers in order that the decisions of the Circuit Court of Appeals for the Ninth Circuit should be made to conform to decisions of Courts of coordinate jurisdiction, and that to such an end Writs of Certiorari should be granted and this Court should

review the decisions of the Circuit Court of Appeals for the Ninth Circuit and finally reverse them.

Dated, San Francisco, California,
May 4, 1934.

NATIONAL PAPER PRODUCTS COMPANY,
ZELLERBACH PAPER COMPANY,
By JOHN FRANCIS NEYLAN,
J. PAUL MILLER,
Attorneys for Petitioners.

(Appendix Follows.)

Appendix

PERTINENT PARTS OF THE REVENUE ACT OF 1924, c. 234, 43 STAT. 253.

Sec. 239(a). Every corporation subject to taxation under this title shall make a return, stating specifically the items of its gross income and the deductions and credits allowed by this title. * * *

Sec. 241(a). Returns of corporations shall be made at the same time as is provided in subdivision (a) of section 227. * * *

Sec. 227(a). Returns (except in the case of nonresident aliens) shall be made on or before the fifteenth day of the third month following the close of the fiscal year, * * *

Sec. 240(a). Corporations which are affiliated within the meaning of this section may, for any taxable year, make separate returns or, under regulations prescribed by the Commissioner with the approval of the Secretary, make a consolidated return of net income for the purpose of this title, in which case the taxes hereunder shall be computed and determined upon the basis of such return. * * *

Sec. 230. In lieu of the tax imposed by section 230 of the Revenue Act of 1921 there shall be levied, collected, and paid for each taxable year upon the net income of every corporation a tax of 12½ per centum of the amount of the net income in excess of the credits provided in sections 236 and 263.

Sec. 277(a). Except as provided in section 278 and in subdivision (b) of section 274 and in subdivision (b) of section 279:

(1) The amount of income, excess-profits, and war-profits taxes imposed by the Revenue Act of 1921, and by such Act as amended, for the taxable year 1921 and succeeding taxable years, and the amount of income taxes imposed by this Act, shall be assessed within four years after the return was filed, and no proceeding in court for the collection of such taxes shall be begun after the expiration of such period.

Sec. 277(b). The period within which an assessment is required to be made by subdivision (a) of this section in respect of any deficiency shall be extended (1) by 60 days if a notice of such deficiency has been mailed to the taxpayer under subdivision (a) of section 274 and no appeal has been filed with the Board of Tax Appeals, or, (2) if an appeal has been filed then by the number of days between the date of the mailing of such notice and the date of the final decision by the Board.

Sec. 278(a). In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

Sec. 274(a). If, in the case of any taxpayer, the Commission determines that there is a deficiency in respect of the tax imposed by this title, the taxpayer, except as provided in subdivision (d), shall be notified of such deficiency by registered mail, but such deficiency shall be assessed only as hereinafter provided. Within 60 days after such notice is mailed the tax-

payer may file an appeal with the Board of Tax Appeals established by section 900.

PERTINENT PARTS OF THE REVENUE ACT OF 1926, c. 27, 44 STAT. 9.

Sec. 239(a). Every corporation subject to taxation under this title shall make a return, stating specifically the items of its gross income and the deductions and credits allowed by this title. * * *

Sec. 241(a). Returns of corporations shall be made at the same time as is provided in subdivision (a) of section 227, * * *

Sec. 227(a). Returns (except in the case of nonresident aliens) shall be made on or before the fifteenth day of the third month following the close of the fiscal year, * * *

Sec. 240(a). Corporations which are affiliated within the meaning of this section may, for any taxable year, make separate returns or, under regulations prescribed by the Commissioner with the approval of the Secretary, make a consolidated return of net income for the purpose of this title, in which case the taxes thereunder shall be computed and determined upon the basis of such return. * * *

Sec. 230(a). In lieu of the tax imposed by section 230 of the Revenue Act of 1924, there shall be levied, collected, and paid for each taxable year upon the net income of every corporation, a tax at the following rates:

(1) For the calendar year 1925, 13 per centum of the amount of the net income in excess of the credits provided in sections 236 and 263.

Sec. 277(a). Except as provided in section 278:

(1) The amount of income taxes imposed by this Act shall be assessed within three years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period.

Sec. 277(b). The running of the statute of limitations provided in this section or in section 278 on the making of assessments and the beginning of distraint or a proceeding in court for collection, in respect of any deficiency, shall (after the mailing of a notice under subdivision (a) of section 274) be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or a proceeding in court, and for 60 days thereafter.

Sec. 274(a). If in the case of any taxpayer, the Commissioner determines that there is a deficiency in respect of the tax imposed by this title, the Commissioner is authorized to send notice of such deficiency to the taxpayer by registered mail. Within 60 days after such notice is mailed (not counting Sunday as the sixtieth day), the taxpayer may file a petition with the Board of Tax Appeals for a redetermination of the deficiency. Except as otherwise provided in subdivision (d) or (f) of this section or in sections 279, 282, or 1001, no assessment of a deficiency in respect of the tax imposed by this title and no dis-

traint or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such 60-day period, nor, if a petition has been filed with the Board, until the decision of the Board has become final. * * *

Sec. 278(a). In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

Sec. 1200(a). The following parts of the Revenue Act of 1924 are repealed, to take effect (except as otherwise provided in this Act) upon the enactment of this Act, subject to the limitations provided in subdivision (b):

Title II (called "Income Tax") as of January 1, 1925, except section 257 and sections 271 to 282, inclusive;

Section 257 and sections 271 to 282, inclusive (being certain administrative provisions of the income tax);
* * *